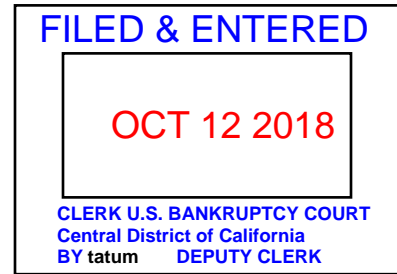


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CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:) **Case No. 2:18-bk-11475-RK**
)
CATHERINE TRINH,)
)
Debtor.) **Chapter 11**
)
)
) **ORDER GRANTING IN PART AND**
) **DENYING IN PART DEBTOR'S**
) **MOTION FOR FURTHER EXTENSION**
) **OF EXCLUSIVITY PERIODS TO FILE**
) **A DISCLOSURE STATEMENT AND**
) **PLAN OF REORGANIZATION**
)
)
) Hearing:
) Date: October 10, 2018
) Time: 11:00 a.m.
) Place: Courtroom 1675
)

At the place and time above-stated, there came on for hearing on regular notice debtor Catherine Trinh's ("**Debtor**") Motion for Further Extension of Exclusivity Periods (the "**Motion**") to File a Disclosure Statement and Plan of Reorganization, and to Extend the Exclusivity Period ("**Exclusivity Period**") for

1 Filing a Chapter 11 Plan (“**Plan**”). Alan W. Forsley of Fredman Lieberman Pearl,
2 LLP appeared on behalf of the Debtor. Hatty Yip, Trial Attorney, Office of the
3 United States Trustee, appeared on behalf of the Office of the United States Trustee,
4 and Michael Simon, of the law firm of Smiley Wang-Ekval, LLP, appeared
5 telephonically on behalf of creditor Second Generation, Inc. There were no other
6 appearances. Having considered the Motion, the opposition, and the oral arguments
7 of the parties at the hearing and finding notice to have been proper, and good cause
8 appearing,

9 **IT IS HEREBY ORDERED THAT:**

10 1. The Motion is granted based upon the court’s reasons set forth in its
11 tentative ruling which is attached as **Exhibit “1”** hereto and as stated on the record at
12 the hearing;

13 2. The Exclusivity Period is hereby extended to, and including, January 5,
14 2019.

15 3. Parties other than Debtor are prohibited from filing competing plans
16 during the Exclusivity Period.

17 4. Debtor has through, and including, March 6, 2019 to seek acceptances
18 of a Plan.

19
20 ###

21
22
23
24 Date: October 12, 2018


25 
26 Robert Kwan
27 United States Bankruptcy Judge
28

EXHIBIT 1

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 10, 2018

Hearing Room 1675

11:00 AM

2:18-11475 Catherine Trinh

Chapter 11

#1.00 Hearing re: Motion under 11 U.S.C. §1112(b)(1) to convert, dismiss or appoint a chapter 11 trustee with an order directing payment of quarterly fees and for judgment thereon

Docket 152

Tentative Ruling:

The motion of United States Trustee to dismiss or convert is based on somewhat technical violations of the bankruptcy rules and United States Trustee guidelines which have been remedied or can readily be remedied, such as lack of sufficient proof of insurance coverage, late filing of monthly operating reports and incomplete payment of quarterly fees. The court is inclined to continue the hearing on the motion to allow short but reasonable period of time to allow debtor to take corrective action to remedy these readily remediable technical violations.

The required corrective action to address the concerns raised in the motion as attested to by the bankruptcy analyst must include:

1. Proof of insurance coverage, which appears to have been provided now.
2. Prompt payment of any United States Trustee quarterly fees currently due.
3. Complete disclosure of all receipts and disbursements by debtor postpetition on her monthly operating reports, which require amendment of her filed reports. Disclosures must include identification of all receipts of family support payments and all disbursements of any and all funds by her postpetition. Debtor in her opposition to the motion indicates that she would file amended reports, but has not yet done so, which calls to mind the adage that actions speak louder than words.
4. Appropriate use of debtor's DIP bank accounts, including using her general DIP account for most disbursements, and discontinuance of use of the DIP payroll and tax accounts because there does not appear to be a justifiable reason to have these separate DIP accounts apart from the general DIP account.
5. Discontinuance of debtor's use of a community property joint bank account with the nondebtor spouse.
6. Timely filing of future monthly operating reports. The court is of the view

**United States Bankruptcy Court
Central District of California
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Chapter 11

that the previous reports have not been late for long periods of time, but debtor's persistent tardiness in filing her reports indicates a dilatory attitude which goes to show that she lacks sufficient motivation to prosecute this case, which may by itself warrant granting relief requested by the United States Trustee.

No tentative ruling as of 10/5/18. Appearances are required on 10/10/18.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 10, 2018

Hearing Room 1675

11:00 AM

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Chapter 11

#2.00 Hearing re: Motion for extension of exclusivity periods to file a disclosure statement and plan, and seek acceptances of plan of reorganization

Docket 158

Tentative Ruling:

Tentative rulings on debtor's objections to the declaration of Robert S. Marticello:

Objections ##1-4 - Overrule. The context for these statements in the declaration show that declarant is making the declaration in this case as counsel for a creditor in response to the instant motion to extend plan exclusivity. Having said this, counsel/declarant is admonished to proofread his submissions to the court before filing. See Morten Lund, *Jagged Rocks of Wisdom: Professional Advice for the New Attorney* (The Fine Print Press, Inc., 2007) at 1-9 ("Rule Number 1: Proofread. . . .Rule Number 2: Proofread Again")

Objection #5 - Overrule.

Objection #6 - Sustain - lack of personal knowledge, lack of foundation

Objection #7 - Overrule

Objection #8 - Sustain - improper opinion

Grant motion in part, deny in part, and extend plan exclusivity by additional 120 days. The court agrees with the observation of the Bankruptcy Appellate Panel in *In re Henry Mayo Newhall Memorial Hospital*, 282 B.R. 444, 453 (9th Cir. BAP) as pointed out by Creditor Second Generation, Inc., that "a transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward towards a fair and equitable resolution."

Considering the various standard factors considered by the courts in cases such as *Henry Mayo Newhall Memorial Hospital* and *In re Dow Corning Corp.*, 208 B.R. 661, 664-665 (Bankr. E.D. Mich. 1997), the court is of the view that extension of exclusivity for a short period of time will facilitate moving the case forward towards a fair and equitable resolution. Although debtor's reasons are somewhat underwhelming, especially its recital of what it has

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Central District of California
Los Angeles
Judge Robert Kwan, Presiding
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done in this case, the court believes on the totality of circumstances of the case at this present stage partial relief is warranted. This is only the second request for extension after a first extension of only four months. Although this case does not involve a complex operating business such as a hospital in Henry Mayo or a manufacturing concern in Dow Corning, there is some complexity here because the uncertain status of debtor's interest in the residence and her personal property interests, including the Ben Lynn Trust worth \$1.4 million and amounts owed her by other parties totalling over \$1 million. Resolution of the adversary proceeding over what her interest in the real property will have a large impact on the reorganization. Debtor has been involved in discovery and other litigation proceeding with one of her major creditors, Second Generation, Inc. Debtor appears to be paying her bills as they become due, except for a small amount of late paid United States Trustee quarterly fees. It does not appear that debtor is seeking the extension of exclusivity to pressure creditors. Debtor has an unresolved contingency in litigation of an appeal of an adverse judgment in favor of creditor Second Generation, Inc., which she is prosecuting. Debtor has shown that there is some evidence that time for her to negotiate a plan of reorganization and prepare adequate information and that there is some evidence of good faith progress towards reorganization for the reasons stated in her moving and reply papers, but the motion shows weakness because she does not discuss her specific efforts to negotiate a plan of reorganization with her creditors, including Second Generation (whose counsel stated in his declaration that debtor has not made no effort to negotiate with that creditor, his client), and to collect the amounts owed her by other which she stated was about \$1 million. Moreover, the motion shows weakness in debtor failing to discuss in her papers as to how her other personal property assets, including her interest in the Ben Lynn Trust listed in her schedules with a value of \$1.4 million, can be utilized in a plan of reorganization. The value of these assets are the majority of debtor's assets, even if it is later determined that the residence is community property, which would mean a one-half interest worth \$1.8 million would be part of the estate. These circumstances only warrant another 120 days extension of exclusivity and not to the statutory maximum of 18 months after the petition date as requested in the motion. the court is of the view that debtor should have another limited period of time to exclusively propose a plan, which incorporates her efforts to realize value of her personal property assets and to negotiate terms with her creditors, which

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is not really evident in her moving papers which just focus on the one real property asset, the residence, and the litigation with the one creditor, Second Generation.

Appearances are required on 10/10/18, but counsel may appear by telephone.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley